

REMARKS

Applicant herewith affirms the election, without traverse, of the claims of Group I, claims 1 through 14, as provisionally elected in the telephone conversation with the Examiner on December 21, 2004. It is requested that the claims of Groups II and III remain in the application pending determination of their ultimate disposition.

This specification has been amended to correct certain small errors therein. No new matter is involved.

Claims 1, 3, and 10 have been amended for reasons set forth hereinafter, and claim 11 has been canceled. In addition new claims 25 through 28 have been added.

Claims 1 through 4 and 6 through 9 were rejected under 35 U.S.C. §102(b) as being anticipated by US patent 4,221,402 of Kazmark (hereinafter '402). While many of the features of Applicant's claimed invention are shown in the '402 patent, it should be noted that the apparatus thereof has only two positions, *i.e.*, fully extended and locked, or unlocked and collapsed. As pointed out in Applicant's specification on page 1, third paragraph, there is a need for a wheeled luggage carrying cart that is amenable for use by small children, and older children, and adults, and it is this need that Applicant's cart addresses and meets. On page 6, second full paragraph, and in Figures 1 and 5, the locating and holding members 33, 34 and/or 42,43 are shown in a configuration that allows adjustment of the brackets is possible in "virtually any desired telescopic position". Thus such an arrangement is used to adjust the height of the cart and lock it to accommodate small children, or children of any height. Such an arrangement is not shown, addressed, or suggested in the '402 reference.

Claim 1, and claims dependent thereon, have been amended to claim the arrangement of Figure 5 and, therefore, are believed to be allowable over the '402 reference. Thus, claims 2 through 4 and 6 through 9, dependent directly or indirectly on amended claim 1, are believed to be clearly allowable.

Claim 5, dependent on claim 2 was rejected under 35 U.S.C. §103(a) on the '402 patent and further in view of US patent 3,778,659 of Allen is believed to be allowable for its dependency on an allowable claim, *i.e.*, claim 2.

Claims 10 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '402 patent in view of US patent 5,685,552 of Osaki. The Examiner maintains that the diagonal, folding locking members 39 (see column 3, lines 62 through 67 of Osaki) are a V-shaped support member. According to Osaki, they are not support members, they are locking members. In order that this distinction is made clear, claim 10 has been amended to define the V-shaped supporting configuration more clearly. The added limitations in claim 10 are clear from page 4, first full paragraph and Figures 1 and 3. Reference to the "Plane" of the V-shaped support member 26 is not made in the specification. However, it is believed to be self-evident in view of the foregoing cited text and Figures 1 and 3.

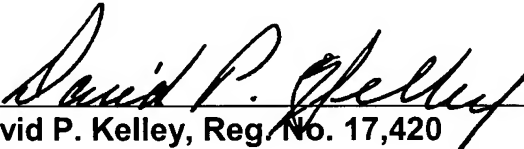
In view of the amendments to claim 10, claim 11 has been cancelled.

Claims 12 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '402 patent. Inasmuch as claims 12 through 14 are dependent, directly or indirectly, on claim 1, they are believed to be allowable for the same reasons as claim 1.

New claims 25 through 27 are all dependent, directly or indirectly, on amended claim 1 and are more specific as to the details of the positioning and locking members. These claims define structure that is clearly not shown or suggested in the references and, hence, are believed to be allowable.

In view of the foregoing, it is respectfully submitted that all of the claims presently in the case are clearly allowable, and favorable action in that regard is earnestly solicited.

Respectfully submitted,


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